

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**MARC GRANO as personal representative §  
of the WRONGFUL DEATH ESTATE §  
OF JONATHAN ANDREW GARCIA §  
and a Next Friend to J.O.G., A.S.R., An.J.G §  
and Ar.J.G §**

**Plaintiff, §**

**v. §**

**Case No. 1:20-cv-00147-PJK-KK §**

**STATE OF NEW MEXICO, GREGG §  
MARCANTEL, New Mexico Secretary of §  
Corrections, DAVID JABLONSKI, New §  
Mexico Secretary of Corrections, §  
CLARENCE OLIVAS, Deputy Warden §  
Of Penitentiary of New Mexico, BRIAN §  
LUCERO, Corrections Officer, FNU §  
MARTINEZ, Corrections Officer, FNU §  
BACA, Captain, Corrections Officer, FNU §  
WELLS, Sergeant, Corrections Officer, and §  
JOHN DOES 1 through 5, employees, §  
staff, agents of Penitentiary of New Mexico, §**

**Defendants. §**

**DEFENDANTS' MOTION FOR LEAVE TO FILE PRETRIAL MOTIONS**

COME NOW, Defendants State of New Mexico, Gregg Marcantel, New Mexico Secretary of Corrections; David Jablonski, New Mexico Secretary of Corrections; Clarence Olivas, Deputy Warden of Penitentiary of New Mexico; Brian Lucero, Corrections Officers; FNU Martinez, Corrections Officer; FNU Baca, Corrections Officer; FNU Wells, Sgt. Corrections Officer; and John Does 1 through 5, employees, staff, agents of Penitentiary of New Mexico, by and through its counsel of record, Garcia Law Group, LLC (Bryan C. Garcia, Meghan S. Nicholson, and Rodney L. Gabaldon) hereby submits its *Motion for Leave to File Pretrial Motions*, and in support of which states:

### **ARGUMENT**

Following several other discovery issues in this matter, Plaintiff's expert disclosure was filed with the Court on February 11, 2022 and disclosed anticipated testimony of Dr. Brian McDonald, Plaintiff's economist expert, and Dr. Alon Steinberg, Plaintiff's cardiologist expert. On February 22, 2022, the Defendants requested deposition dates for both of these experts, however no such dates were supplied, and Defendants were forced to file their Motion to Compel on March 8, 2022. [Doc 102]. Even after the filing of this Motion, Plaintiff failed to supply dates for his experts' depositions, and the Court entered its Order compelling dates on April 14, 2022. [Doc. 119].

Given the delay in obtaining dates, the soonest available opportunities for the depositions of Plaintiff's experts were April 21, 2022, and May 2, 2022. The depositions were conducted, and transcripts were produced to the parties by the court reporters in mid-May. During this timeframe, Defendants have stipulated to Plaintiff's counsel's requests for several extensions on deadlines. [Docs. 100, 105, 127, 133].

Following a review of Plaintiff's experts' reports and testimony, it has become apparent that there are significant issues with the proffered opinions. Defendants herein seek leave of Court to file Motions to Strike significant portions of Dr. McDonald's and Dr. Steinberg's opinions after the pretrial motion deadline of May 12, 2022. [Doc. 91]. Plaintiff's Counsel was contacted regarding the relief sought in this Motion and opposed.

### **CONCLUSION**

Defendants should not be prejudiced by the delays in the expert discovery in this matter, over which they had no control. There remains sufficient time to hear the issues regarding Plaintiff's experts prior to the trial setting in this matter on October 11, 2022. [Doc 135]. Therefore, Defendants request leave of Court to file its Motion to Strike

Plaintiff's Experts after the pretrial motion deadline. The referenced Motions are filed contemporaneously with this Motion to prevent further delay.

Respectfully submitted:

**GARCIA LAW GROUP, LLC**

*/s/ Rodney Gabaldon*

MEGHAN S. NICHOLSON

RODNEY L. GABALDON

BRYAN C. GARCIA

*Attorneys for Defendants*

6739 Academy Road NE, Suite 200

Albuquerque, NM 87109

(505) 629-1576 / (505) 652-1337 (fax)

[rgabaldon@garcialawgroupllc.com](mailto:rgabaldon@garcialawgroupllc.com)

[bgarcia@garcialawgroupllc.com](mailto:bgarcia@garcialawgroupllc.com)

[mnicholson@garcialawgroupllc.com](mailto:mnicholson@garcialawgroupllc.com)

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that on the 15<sup>th</sup> day of June, 2022, a true and correct copy of the foregoing was electronically filed with the Clerk of the Court using CM/ECF system and has been served on Plaintiff, pursuant to Federal Rules of Civil Procedure as follows:

Joseph M. Romero  
JOSEPH M. ROMERO LAW, LLC  
P.O. Box 27579  
Albuquerque, NM 87125  
Tel: (505) 433-1642  
E-mail: [joe@romerolawnm.com](mailto:joe@romerolawnm.com)  
*Attorney for Plaintiff*

Anna C. Martinez  
AEQUITAS LAW OF NEW MEXICO, LLC  
P.O. Box 25304  
Albuquerque, NM 8725  
E-mail: [annacmartinezesq@gmail.com](mailto:annacmartinezesq@gmail.com)  
*Attorney for Plaintiff*

By: *//s// Rodney Gabaldón*  
Rodney Gabaldón